

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MARK HEDGEMAN,

Plaintiff,

v.

UNITED AIRLINES, INC.,

Defendant.

99 C 7725

Judge Harry D. Leinenweber

MEMORANDUM OPINION AND ORDER

Plaintiff Mark Hedgeman ("Hedgeman") brought this suit against United Airlines ("United") alleging that United unlawfully discriminated against him on the basis of his sex in violation of Title VII of the Civil Rights Act of 1964, as amended. United now moves to strike several paragraphs of Hedgeman's Local Rule 56.1(b)(3)(B) Statement of Additional Facts and for summary judgment.

BACKGROUND

Hedgeman worked for United Airlines as a ramp serviceman at United's O'Hare Cargo Services facility from November 1988 through November 1998. United terminated Hedgeman in November 1998, following a dispute between Hedgeman and a female co-worker, Debrae Robinson. The crux of Hedgeman's claim is that United discriminated against him on the basis of his sex when it

disciplined him more severely than Robinson for substantially the same behavior.

The International Association of Machinists and Aerospace Workers (the "IAM") represents United's ramp servicemen. The servicemen are subject to the terms and conditions of a collective bargaining agreement (the "CBA") between United and IAM, and they are also subject to the Rules of Conduct for IAM Represented Employees (the "Rules of Conduct"). The CBA requires United to follow a specific process when disciplining or discharging an employee and provides a grievance procedure that IAM may invoke when challenging the discipline administered. First, the employee's supervisor holds a fact-finding investigation, and if the conduct warrants punishment, proposes a level of discipline. If the supervisor recommends a Level IV or Level V-Discharge, the supervisor must give written notice to the employee, IAM, and the department manager. The supervisor then schedules an Investigative Review Hearing (the "IRH").

At the IRH, the supervisor presents the company's case, the IAM represents the employee, and the department manager serves as the hearing officer. Both parties may call witnesses, cross-examine witnesses, and rebut the other side's arguments. In cases involving a proposed discharge, the IAM may appeal the

decision directly to the third step of the grievance procedure set forth in the CBA.

The hearing officer at the third step of the procedure is a representative from United's People Services Division. At this level, the IRH officer and the supervisor initiating the discipline present the company's case, and the IAM represents the employee. Both parties may again call witnesses, cross-examine witnesses, and rebut each other's arguments. If the decision reached is adverse to the employee, the IAM may request that the matter be arbitrated.

On October 14, 1998, Guy Montes ("Montes"), a supervisor in the Cargo Services department, and Hedgeman were working the swing shift. Hedgeman called Montes to tell him that he was going home sick. When Montes arrived at work the next day, another supervisor told him that Debrae Robinson ("Robinson"), a ramp serviceman on the swing shift, had called in to say that she would be late because she was at the police station. The supervisor told Montes that Robinson was at the police station because Hedgeman had been arrested that morning for coming to her home and threatening her. The supervisor also told Montes that Robinson had reported that there had been an altercation at work between her and the plaintiff the previous day. Montes explained the situation to his boss, Jack Lampe, Manager of

Cargo Services, and initiated a fact-finding investigation that same day.

Montes began by separately interviewing the other employees who worked the swing shift on October 14. Tim Neal ("Neal"), another ramp serviceman, told Montes that Hedgeman and Robinson began shouting at each other. Neal told Montes that Hedgeman approached Robinson, and she slapped him on the face, at which point co-workers separated them. Other employee interviews supported this version of events.

Montes also interviewed Robinson and Hedgeman. Montes interviewed Robinson on October 15, and she told him that Hedgeman started yelling and swearing at her during the altercation and spat in her face. According to Robinson, Hedgeman appeared at her door the next morning and threatened her. Montes interviewed Hedgeman on October 16. An IAM shop steward represented Hedgeman during the interview, and Montes took notes of Hedgeman's statements. Hedgeman denied spitting on Robinson and asserted that Robinson slapped him after he asked her a question about another co-worker.

Montes concluded that both Hedgeman and Robinson had violated Rule 23 of the Rules of Conduct for IAM Represented Employees. Rule 23 prohibits fighting or provoking a fight, threatening, coercing, intimidating, or assaulting other

individuals while on company property, on company business, or in other work-related circumstances. The discipline administered for a Rule 23 can be a Level IV or Level V-Discharge, and Montes proposed a Level V-Discharge for both. Montes removed Robinson and Hedgeman from service, and they received written notice of the charges and proposed discipline. The grounds for Hedgeman's charge were his conduct on October 14, the face-to-face shouting match with Robinson, and his conduct on October 15, going to Robinson's house and getting into an altercation with her and her boyfriend. The ground for the charge against Robinson was her conduct on October 14 during the face-to-face shouting match.

The company then held a separate IRH for each on November 4, 1998. Jack Lampe, a Manager of Cargo Services, served as hearing officer for the hearings, and Montes presented the company's case against both. Lampe concluded that an altercation took place between Robinson and Hedgeman on October 14, during which Hedgeman spat on Robinson, and Robinson slapped Hedgeman. Lampe also concluded that Hedgeman's visit to Robinson's home was an extension of the dispute. As a result, Lampe decided to assess a Level IV-Last Chance discipline to Robinson and a Level V-Discharge discipline to Hedgeman. Lampe believed that the purpose of Hedgeman's appearance at Robinson's

house was to escalate the situation because his reasons for being near her house were not credible.

The IAM appealed Lampe's decision to the third step of the grievance procedure. Kathy Livingston, a Labor Relations representative in United's People Services Division, served as the hearing officer. Both sides had the opportunity to call witnesses, cross-examine witnesses, and rebut each other's arguments. On December 22, 1998, Livingston decided to uphold the Level V-Discharge as the appropriate penalty for Hedgeman's conduct, finding that Hedgeman's conduct on October 15 warranted a higher level of discipline than the discipline assessed against Robinson.

On January 26, 1999, Hedgeman filed his Charge of Discrimination with the Equal Employment Opportunity Commission (the "EEOC") complaining of a continuing violation of unfair and discriminatory practices, including, but not limited to, sex discrimination. The EEOC issued Hedgeman's Notification of Right to Sue on August 31, 1999. Hedgeman then filed this suit on November 29, 1999.

## **DISCUSSION**

### **Motion to Strike**

United moves to strike ¶¶ 12, 13, 20-23, 27, 29, 31, and 32 of Hedgeman's Rule 56.1(b)(3)(B) Statement of Additional Facts.

To avoid deciding matters immaterial to the summary judgment motion, the Court denies United's motion to strike. Nevertheless, allegations that are not properly before the Court will be disregarded, as indicated below.

### **Summary Judgment**

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED.R.CIV.P. 56(c). The court must "review the record in the light most favorable to the nonmoving party and draw all reasonable inferences in that party's favor." *Vanasco v. National-Louis University*, 137 F.3d 962, 964 (7th Cir. 1998). Nevertheless, the nonmovant may not rest upon mere allegations but "must set forth specific facts showing that there is a genuine issue for trial." FED.R.CIV.P. 56(e). See also *LINC Finance Corp. v. Onwuteaka*, 129 F.3d 917, 920 (7th Cir. 1997).

A genuine issue of material fact is not shown by the mere existence of "some alleged factual dispute between the parties," *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986), or by "some metaphysical doubt as to the material facts." *Matsushita Electric Industrial Company*

*v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). A genuine issue of material fact exists only if "a fair-minded jury could return a verdict for the [nonmoving party] on the evidence presented." *Anderson*, 477 U.S. at 252, 106 S.Ct. 2505. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict." *Freeman v. Madison Metropolitan School District*, 231 F.3d 374, 379 (7th Cir. 2000) (quotation omitted). The court applies this standard with added rigor in employment discrimination cases where issues of intent and credibility often dominate. See *Sarsha v. Sears, Roebuck & Co.*, 3 F.3d 1035, 1038 (7th Cir. 1993).

### **Analysis**

A claim of employment discrimination can be proved by showing direct or indirect evidence of discrimination. Where, as here, the plaintiff is relying on indirect evidence, the court applies the familiar burden-shifting method established by *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed.2d 668 (1973), and its progeny. To establish a prima facie case of employment discrimination, Hedgeman must present evidence that: (1) he was a member of a protected class; (2) he



was meeting United's legitimate performance expectations; (3) he suffered an adverse employment action; and, (4) United treated similarly situated persons outside the protected class more favorably. See *Vakharia v. Swedish Covenant Hospital*, 190 F.3d 799, 806 (7th Cir. 1999). United contends that Hedgeman cannot establish a prima facie case because he failed to meet United's legitimate performance expectations and because he cannot establish that United treated similarly situated females more favorably than him.

Once Hedgeman establishes a prima facie case, there is a presumption of discrimination that obliges United to produce a legitimate, nondiscriminatory reason for its decision. If United can so do, the burden shifts back to Hedgeman to present evidence that United's proffered reason is pretextual. *Id.* at 806-7. Pretext in this context means "a lie, specifically a phony reason for some action." *Jackson v. E.J. Brach Corp.*, 176 F.3d 971, 983 (7th Cir. 1999)(internal quotation and citation omitted). Hedgeman may establish pretext by showing evidence that United was more likely than not motivated by a discriminatory reason or that United's explanation is not worthy of credence, *i.e.*, that the explanation was factually baseless, that it was not United's actual motivation, or that it was an insufficient rationale for the action. See *Id.* at 983.

Hedgeman bears the ultimate burden of demonstrating an impermissible motive or intent. *See Johnson v. Zema Systems Corp.*, 170 F.3d 734, 742 (7th Cir. 1999).

Hedgeman contends that his performance met United's legitimate expectations because he always received favorable evaluations throughout his ten-year employment with United. Even if this is accepted as true, however, it cannot negate United's determination that Hedgeman's conduct on October 14-15, 1998 failed to meet its legitimate expectations. Hedgeman admits that after conducting an investigation, Montes concluded that his conduct violated Rule 23 of the Rules of Conduct for IAM Represented Employees. (Pl.'s Resp. to Def.'s 56.1(a) Stmt. of Uncontested Material Facts ¶ 52 ("Pl.'s Resp.")) He does not dispute that after two review hearings, this decision was upheld, and that United terminated Hedgeman after deciding that termination was the appropriate penalty for his conduct. (Pl.'s Resp. ¶¶ 58, 89, & 91.) Hedgeman's altercation with Robinson violated the Rules of Conduct, leaving him well short of meeting United's legitimate performance expectations and equally well short of establishing this element of a prima facie case.

Hedgeman also fails to establish that United treated similarly situated females more favorably than him. In attempting to establish this prong of a prima facie case,

Hedgeman compares himself to Robinson. To meet this element of a prima facie case, however, Hedgeman must show that he is similarly situated to Robinson in all respects. *Spath v. Hayes Wheels International-Indiana, Inc.*, 211 F.3d 392, 397 (7th Cir. 2000)(holding that plaintiff was not similarly situated to co-workers because their conduct was not of comparable seriousness). This he cannot do because he admits that United ultimately decided his conduct warranted a higher level of discipline than Robinson's due to his behavior on October 15. (Pl.'s Resp. ¶ 94.)

To overcome this obstacle, Hedgeman argues that United's investigatory and charging practices constitute sex discrimination and claims that Montes' inquiry unfairly favored Robinson and neglected adequately to investigate Hedgeman's claims against her. Specifically, Hedgeman implies that Montes viewed Robinson as the victim in the incident, a sentiment he betrayed when Montes gave her an "alleged victim" form to complete. Hedgeman also argues that Montes failed to investigate and present evidence that Robinson threatened him when he went to her home on October 15. Certainly, selective enforcement of company policies against one gender but not the other does constitute sex discrimination, *Morrow v. Wal-Mart Stores, Inc.*, 152 F.3d 559, 561 n. 3 (7th Cir. 1998), but

Hedgeman offers no facts upon which the court may rely to support his allegations.

Montes may have given Robinson an "alleged victim" form to complete, but there are no facts from which a jury could infer that Montes did so because of bias. Citing his affidavit, Hedgeman maintains that Montes failed to investigate his claims that Robinson and her boyfriend assaulted and battered him on October 15 and his claims that he filed criminal charges against them for such behavior. (Pl.'s Aff. ¶¶ 23, 27, 29, & 31.) Hedgeman also claims that Montes failed to charge Robinson with the threatening and intimidating behavior she allegedly exhibited on October 15. (Pl.'s Aff. ¶ 29.) However, Hedgeman stated in his deposition that he never talked to Montes about filing criminal charges against Robinson for her conduct on October 15. (Pl.'s Dep. 165-67.) Again relying upon his affidavit, Hedgeman asserts that Montes only interviewed him about the events on October 14. (Pl.'s Aff. ¶ 21.) However, Hedgeman testified during his deposition that he understood Montes to be interviewing him about the incidents on both October 14 and 15. (Pl.'s Dep. 157-58.)

Affidavits in conflict with prior sworn testimony should be disregarded. *Kalis v. Colgate-Palmolive Co.*, 231 F.3d 1049, 1056 (7th Cir. 2000). The court therefore refuses to consider

alleged facts set forth in Hedgeman's affidavit that conflict with his deposition testimony. Hedgeman presents no other evidence to support his allegation that Montes' investigation was lacking, and "Rule 56 demands something more than the bald assertion of a general truth of a particular matter, rather it requires affidavits that cite specific concrete facts establishing the existence of the truth of the matter asserted." *Haldley v. County of DuPage*, 715 F.2d 1238, 1243 (7th Cir. 1983), *cert. denied*, 465 U.S. 1006 (1984). As a result, Hedgeman's conclusory assertions that Montes failed to investigate his claims, with no other evidence that Montes' investigation was discriminatory, leaves him unable to establish that he was similarly situated to Robinson.

Assuming that Hedgeman could establish a *prima facie* case, United has proffered a legitimate, non-discriminatory reason for Hedgeman's termination: that his altercation with Robinson violated company rules, and his behavior on October 15 warranted a higher level of discipline than did her behavior. Hedgeman must now present evidence that United's reason is pretextual, and he offers two bases for such a finding: (1) Lampe changed his explanation as to why he discharged Hedgeman, and (2) the contrast in Hedgeman's discipline versus another employee disciplined in July 1998.

In an effort to present evidence of pretext, Hedgeman claims that there are inconsistencies in Lampe's findings and articulated reasons for terminating Hedgeman. In his deposition, Lampe testified that he could not determine who was the aggressor in the workplace. (Lampe Dep. at 38.) In his written decision issued following Hedgeman's IRH, however, Lampe determined that Hedgeman was the aggressor. (Pl.'s Ex. 3.) In his declaration given for this litigation, Lampe stated that when an altercation occurs at the workplace, he expects the individuals involved to be mature after the altercation, but Hedgeman failed in this regard when he extended the altercation by going to Robinson's home on October 15. (Lampe Decl. ¶¶ 9-10.) Lampe did not discuss the issue of maturity in either his decision or during his deposition.

These differences are not material and fail to undermine United's stated reason for terminating Hedgeman and assessing a higher level of discipline against him than Robinson. Although Lampe could not remember who he determined to be the aggressor on October 14, he memorialized his determination in his decision following the IRH. Lampe has consistently stated that he believed Hedgeman was the aggressor when he went to Robinson's home on October 15. Lampe has also consistently maintained that Hedgeman's continuation of the conflict on October 15 justified

the difference in discipline assessed to Hedgeman and Robinson. These immaterial differences cited by Hedgeman fall far short of creating a jury question on the issue of pretext.

Hedgeman's other evidence of pretext fares no better. Hedgeman points to a workplace altercation between two men, Jamie Leiva and Robert Lauria. Following the altercation, Leiva followed Lauria home where the argument continued. United assessed Leiva only a Level IV-Last Chance as a result. Hedgeman argues that the difference in discipline assessed in the two cases demonstrates that United has an unofficial policy of shielding female, but not male, victims from threats and intimidation. Hedgeman offers no other evidence to support this claim, however. United, on the other hand, presents evidence that the facts differed significantly between the two cases. Livingston, who also served as a decision-maker in the Leiva case, agreed to assess Leiva a Level IV instead of a Level V-Discharge because she believed the facts of the case would not support a Level V-Discharge if the case went to arbitration. (Livingston Decl. ¶ 6.) Hedgeman's bare allegation of discrimination, without more, fails to rebut United's evidence and by itself, cannot create a genuine issue of material fact undermining United's stated reason for his termination.

#### **CONCLUSION**

For the reasons stated above, United's motion to strike is denied. United's motion for summary judgment is granted.

**IT IS SO ORDERED.**

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Harry D. Leinenweber, Judge  
United States District Court

Dated: \_\_\_\_\_